

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CITY AND COUNTY OF SAN  
FRANCISCO, et al.,

Plaintiffs,

v.

PURDUE PHARMA L.P., et al.,  
Defendants.

Case No. 18-cv-07591-CRB

**ORDER DENYING WALGREENS'  
MOTION TO STRIKE**

Walgreens has moved to strike one of Plaintiff's witness, Carol Lu, from testifying at the abatement phase of the trial. Walgreens' Mot. to Strike (dkt. 1590). Ms. Lu is the Citywide Revenue Manager from the San Francisco Controller's Office and plans to testify about the mechanics and logistics of administering the abatement fund. Id. at 3–4; Opp. at 2 (dkt. 1594). According to Plaintiff, Ms. Lu is prepared to explain how the Controller's Office administers special purpose revenue funds, and how the City tracks these spendings through audits and reports. Opp. at 2. Plaintiff represents that Ms. Lu will assist the Court in understanding, among other things, the City's logistics of "overseeing, tracking, and reporting abatement fund expenditures." Id.

Walgreens accepts that Ms. Lu's expected testimony is relevant to the upcoming trial. See Reply at 2–3 (dkt. 1595). But Walgreens seeks to prevent Ms. Lu from testifying because Plaintiff did not, during discovery, identify Ms. Lu as someone with relevant and discoverable information. Mot. at 2. Walgreens asserts (and Plaintiff does not dispute) that Plaintiff did not identify Ms. Lu as a potential witness until October 6

1 when the parties exchanged their trial witness list. Id. In response, Plaintiff argues that it  
 2 was not required to disclose Ms. Lu as part of discovery because Ms. Lu has no specific  
 3 knowledge about opioids or Walgreens such that her testimony would support or contradict  
 4 Plaintiff's claims or defenses. Opp. at 2–3.

5 The Court agrees with Walgreens that Plaintiff should have identified Ms. Lu  
 6 earlier as a person “likely to have discoverable information that supports or contradicts a  
 7 position or claim that [Plaintiff] ha[s] taken or intend[s] to take in this action.” See Mot. at  
 8 3 (citing Distributor Defendants’ First Set of Interrogatories at 4–5). Ms. Lu plans to  
 9 testify about how the City administers special purpose funds. This expected testimony  
 10 appears to be related to whatever position Plaintiff may take at trial on how to effectuate  
 11 and disburse the abatement fund. The Court, however, disagrees with Walgreens’  
 12 suggestion that Ms. Lu’s testimony may be expert opinion that involves specialized or  
 13 technical knowledge, see Mot. at 4–5. Ms. Lu is the Citywide Revenue Manager, and her  
 14 expected testimony likely is based on her own perceptions, knowledge, and  
 15 understanding—as a member of the Controller’s Office—of the City’s administrative and  
 16 financial operations.

17 Based on the parties’ filings, the Court finds that Ms. Lu’s testimony may be helpful  
 18 and important in crafting an abatement plan, defining the role of a fund administrator (if  
 19 one is appointed), and structuring any oversight of the plan. Accordingly, the Court  
 20 **DENIES** Walgreens’ motion to strike. See Yeti by Molly Ltd. v. Deckers Outdoor Corp.,  
 21 259 F.3d 1101, 1106 (9th Cir. 2001) (noting trial court has “wide latitude” and discretion  
 22 on imposing discovery sanctions). To cure or mitigate the prejudice from Plaintiff’s late  
 23 disclosure, Walgreens may promptly depose Ms. Lu. The Court does not expect Ms. Lu to  
 24 testify until the latter part of trial—i.e., late-November or early-December. There is  
 25 sufficient time for Walgreens to prepare for its cross-examination of Ms. Lu. See, e.g.,  
 26 Pineda v. City & Cnty. of San Francisco, 280 F.R.D. 517, 522 (N.D. Cal. 2012) (declining  
 27 to exclude witness and providing plaintiff an opportunity to cure the deficiency “given the  
 28 importance of this witness”).

**IT IS SO ORDERED.**

Dated: October 25, 2022



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CHARLES R. BREYER  
United States District Judge